

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN D. KNECHT,

Plaintiff,

vs.

FIDELITY NATIONAL TITLE INSURANCE
COMPANY, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC.,
DEUTSCHE BANK NATIONAL TRUST CO.
AS TRUSTEE FOR GSR MORTGAGE LOAN
TRUST 2006-0A1, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-
0A1, AMERICAN HOME MORTGAGE
SERVICING INC.

Defendants.

NO. 2:12-CV-01575 RAJ

FIDELITY NATIONAL TITLE
INSURANCE COMPANY'S
REPLY IN SUPPORT OF
MOTION TO DISMISS

Defendant Fidelity National Title Insurance Company ("Fidelity") submits this reply to Plaintiff's Response to Fidelity's Motion to Dismiss, concerning the property commonly known as 46020 SE Edgewick Road, North Bend, WA 98045 (the "Property").

I. Argument

A. Fidelity complied with the notice provisions of RCW 60.24.030 and .040

Plaintiff's arguments against Fidelity's Motion to Dismiss primarily spring from the theory that notice was not somehow afforded to Plaintiff to discuss "pre-foreclosure Options",

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FIDELITY NATIONAL LAW GROUP
The Law Division of Fidelity National
Title Group, Inc.
1200 - 6TH AVENUE, SUITE 620
SEATTLE, WA 98101
(206) 223-4525

1 and that it somehow failed to comply with the Deed of Trust Act (“DTA”) in its multiple notices
2 to Plaintiff that the Property was being set for sale. Plaintiff’s Response, at pages 5 and 12. This
3 argument, concerning notice and recording, is supposedly premised on the idea that he (1) was
4 never aware which party to contact concerning the pending sale of the Property, or (2) that
5 Fidelity failed to comply with the DTA with its notices.
6

7 Plaintiff’s Response is right that RCW 61.24.030 (6) makes clear that a trustee must keep
8 a street address in Washington State where personal service of process can be made prior to the
9 date of the notice of sale, and through the date after the sale. RCW 61.24.030 (6). Response, at
10 page 13. Nothing at all in RCW 61.24.040 can possibly be interpreted to suggest that what the
11 legislature had just contemplated and clearly set down in 61.24.030 should be supplanted with
12 additional and unspecified requirements for a trustee. Most certainly the legislature was aware
13 that at that time RCW 61.24.030 and .040 were enacted, non-resident entities were frequently
14 acting as foreclosing trustees. But, so long as the borrower being foreclosed could effectuate
15 service on that entity within the State of Washington at a local street address, her interest would
16 be protected for purposes of adequate notice. Plaintiff twists the notice requirement of DTA to
17 an unreasonable and impractical point.
18

19 Here, Fidelity National Title Company of Washington was appointed Trustee in the
20 original April 1, 2006 deed of trust. See **Exhibit A**. Plaintiff incorrectly states that Fidelity
21 appointed itself as new trustee by the recorded appointment on September 16, 2010 (the
22 “Appointment”). Plaintiff’s Response, at page 3. Clearly, Deutsche Bank National Trust
23 Company, as Trustee for GSR Mortgage Loan Trust 2006-0A1 by American Home Mortgage
24
25

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1 Services, Inc. was the beneficiary that appointed Fidelity on that date and through that recording.
2 *See Exhibit B.*

3 The Appointment clearly spells out that Fidelity National Title Insurance Company's
4 local address is 701 Fifth Avenue, Suite 3040, Seattle, WA 98104. Additionally, a simple search
5 of Fidelity National Title Insurance Company in Washington State would yield multiple State
6 offices for contact. The statute requires a local address be maintained for service throughout a
7 foreclosure process. That requirement was clearly met here, as Fidelity has never left the state
8 and has maintained operations here throughout any process against Plaintiff to foreclose on the
9 Property. The DTA does **not** require that the local address be listed in each notice. Instead,
10 RCW 61.24.040 (2) simply has a template for a notice of foreclosure, that can be followed in
11 "substantially" the form described. RCW 61.24.030 (2). Plaintiff seeks to give far too much
12 meaning to this template. Response, at page 13. However, there is no requirement that the
13 notice provide a local address, just that a local address be **maintained** by the trustee throughout
14 the pendency of the process.

15 The point of RCW 64.24.030 is to make certain that a person who has been sent a notice
16 of sale can serve papers back on the foreclosing entity at a local address. Plaintiff argues that
17 the Court should follow the DTA to the letter. Fidelity agrees - the statute says nothing about the
18 required address on the notices themselves, and does not at all demand that the business
19 production of the foreclosing entity be housed in Washington. Clearly Plaintiff cannot argue that
20 he had no phone number or contact information for Fidelity, since the Response acknowledges
21 that the Irvine, California address was listed on each notice of sale, along with the phone number
22 to contact Fidelity. Response, at page 3. A simple telephone call to that Irvine number would
23
24
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1 have revealed a local address maintained by Fidelity in Washington State, should Plaintiff really
 2 have been confused or wanted to serve or contact someone concerning the Property.

3 Plaintiff claims in his Response to have wanted a “dialogue ... between trustee and
 4 borrower”. Response, at page 17. Here, each of the three notices provided just the contact
 5 information Plaintiff needed to open that dialogue. The Response argues passionately that
 6 Fidelity has been “relying on veils of vagueness to ignore or cheapen its responsibilities and
 7 participate in a system of obfuscating the rights and statuses of parties....”. Response, at page
 8 17. Yet, there is nothing at all vague about the address: 1920 Main Street, Suite 1120 Irvine,
 9 CA, with phone number 949-252-4900. *See, e.g.*, Exhibit 5 to Plaintiff’s Complaint. There is
 10 nothing vague at all about Fidelity’s numerous local offices in Washington State that can be
 11 considered a local address under the letter of RCW 64.24.030 and .040.
 12

13 Again, Plaintiff has been silent on whether he could have at any time or ever intends to
 14 pay anything on the note to which he was originally bound. Plaintiff merely alleges each of the
 15 purported irregularities to attempt to invalidate the notices for minor technical defects. This is
 16 not a case where form ought to trump substance, since the statute was absolutely complied with
 17 through Fidelity’s maintained local address.
 18

19 1. Finally, on this point, any argument that the 2006 Fidelity is not the 2010 Fidelity
 20 is ridiculous for purposes of a notice argument. Plaintiff’s Response, at page 3. See Exhibit C.
 21 Fidelity National Title Company of Washington is an appointed agent and sister company of
 22 Fidelity National Title Insurance Company. Again, however, this makes no difference in
 23 applying the statute since the current trustee does maintain an office with employees and
 24 telephones within Washington State.
 25

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B. There is no diversity jurisdiction issue

Fidelity National Title Insurance Company is not a Washington State corporation. It is a California Corporation. **Exhibit C.** Plaintiff again (complaint did the same at Dkt. 2-1) seems to take issue with a clerical error in the Appointment where RCW 61.24 (b) is cited for what likely was meant to be RCW 61.24.010(1)(b). Fidelity is authorized to do business in Washington State, but clearly is not incorporated here. There is no problem with diversity jurisdiction, and removal remains appropriate.

II. Conclusion

For each of the above reasons, and all those stated in Fidelity's Motion to Dismiss, Fidelity respectfully requests that this Court dismiss the Plaintiff's Complaint pursuant to FRCP 12(b)(6), with prejudice for failing to state a claim upon which relief can be granted.

DATED this 30th day of October, 2012.

FIDELITY NATIONAL LAW GROUP



Daniel A. Womac, WSBA #36394
Fidelity National Law Group
The Law Division of Fidelity National
Title Group, Inc.
1200 Sixth Avenue, Suite 620
Seattle, WA 98101
(206) 224-6004
(206) 223-4527 – FAX
*Attorneys for Defendant Fidelity National
Title Insurance Company*

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FIDELITY NATIONAL LAW GROUP
The Law Division of Fidelity National
Title Group, Inc.
1200 – 6TH AVENUE, SUITE 620
SEATTLE, WA 98101
(206) 223-4525

CERTIFICATE OF SERVICE

I hereby certify that on the date given below I caused to be served the foregoing –
FIDELITY'S REPLY IN SUPPORT OF MOTION TO DISMISS on the following individual in
the manner indicated:


Scott E Stafne
Stafne Law Firm
239 N. Olympia Avenue
Arlington, WA 98223
Attorney for Plaintiff

<input type="checkbox"/>	U.S. MAIL
<input type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
<input checked="" type="checkbox"/>	EXPRESS DELIVERY
<input type="checkbox"/>	FACSIMILE

Frederick B. Rivera
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Attorney for Defendants:
Mortgage Electronic Registration Systems Inc's
Deutsche Bank National Trust Co., as Trustee
for GSR Mortgage Loan Trust 2006-041.
Mortgage Pass-Through Certificates Series
2006-041; and American Home Mortgage
Servicing Inc. (now known as Homeward
Residential Inc.)

<input type="checkbox"/>	U.S. MAIL
<input checked="" type="checkbox"/>	LEGAL MESSENGER
<input type="checkbox"/>	EMAIL
<input type="checkbox"/>	HAND DELIVERED
<input type="checkbox"/>	EXPRESS DELIVERY
<input type="checkbox"/>	FACSIMILE

SIGNED this 30th day of October, 2012.


Patricia Burnichon, Paralegal

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